

AMENDED IN SENATE MARCH 25, 2003

SENATE BILL

No. 787

Introduced by Senator Battin

February 21, 2003

An act to amend Sections 53601 and 53635 to the Government Code, relating to local agency investments.

LEGISLATIVE COUNSEL'S DIGEST

SB 787, as amended, Battin. Local agency investments.

Existing law authorizes the legislative body of a local agency having money in a sinking fund of, or surplus money in, its treasury not required for the immediate needs of the local agency to invest any portion of the money that it deems wise or expedient in specified securities and financial instruments. One of the eligible securities is commercial paper of prime quality of the highest ranking, as provided by one of 3 named services, issued by a corporation meeting specified standards.

This bill would provide that the commercial paper of prime quality be of the highest ranking as provided by a nationally recognized ~~rating service~~ *statistical-rating organization* and that the entity issuing the commercial paper meet either the existing standards or another set of standards, as specified.

The bill would also make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 53601 of the Government Code is amended to read:

53601. This section shall apply to a local agency that is a city, a district, or other local agency that does not pool money in deposits or investments with other local agencies, other than local agencies that have the same governing body. However, Section 53635 shall apply to all local agencies that pool money in deposits or investments with other local agencies that have separate governing bodies. The legislative body of a local agency having money in a sinking fund or money in its treasury not required for the immediate needs of the local agency may invest any portion of the money that it deems wise or expedient in those investments set forth below. A local agency purchasing or obtaining any securities prescribed in this section, in a negotiable, bearer, registered, or nonregistered format, shall require delivery of the securities to the local agency, including those purchased for the agency by financial advisers, consultants, or managers using the agency's funds, by book entry, physical delivery, or by third-party custodial agreement. The transfer of securities to the counterparty bank's customer book entry account may be used for book entry delivery.

For purposes of this section, "counterparty" means the other party to the transaction. A counterparty bank's trust department or separate safekeeping department may be used for the physical delivery of the security if the security is held in the name of the local agency. Where this section specifies a percentage limitation for a particular category of investment, that percentage is applicable only at the date of purchase. Where this section does not specify a limitation on the term or remaining maturity at the time of the investment, no investment shall be made in any security, other than a security underlying a repurchase or reverse repurchase agreement or securities lending agreement authorized by this section, that at the time of the investment has a term remaining to maturity in excess of five years, unless the legislative body has granted express authority to make that investment either specifically or as a part of an investment program approved by the legislative body no less than three months prior to the investment:

(a) Bonds issued by the local agency, including bonds payable solely out of the revenues from a revenue-producing property

1 owned, controlled, or operated by the local agency or by a
2 department, board, agency, or authority of the local agency.

3 (b) United States Treasury notes, bonds, bills, or certificates of
4 indebtedness, or those for which the faith and credit of the United
5 States are pledged for the payment of principal and interest.

6 (c) Registered state warrants or treasury notes or bonds of this
7 state, including bonds payable solely out of the revenues from a
8 revenue-producing property owned, controlled, or operated by the
9 state or by a department, board, agency, or authority of the state.

10 (d) Bonds, notes, warrants, or other evidences of indebtedness
11 of any local agency within this state, including bonds payable
12 solely out of the revenues from a revenue-producing property
13 owned, controlled, or operated by the local agency, or by a
14 department, board, agency, or authority of the local agency.

15 (e) Federal agency or United States government-sponsored
16 enterprise obligations, participations, or other instruments,
17 including those issued by or fully guaranteed as to principal and
18 interest by federal agencies or United States
19 government-sponsored enterprises.

20 (f) Bankers acceptances otherwise known as bills of exchange
21 or time drafts that are drawn on and accepted by a commercial
22 bank. Purchases of bankers acceptances may not exceed 180 days'
23 maturity or 40 percent of the agency's money that may be invested
24 pursuant to this section. However, no more than 30 percent of the
25 agency's money may be invested in the bankers acceptances of any
26 one commercial bank pursuant to this section.

27 This subdivision does not preclude a municipal utility district
28 from investing any money in its treasury in any manner authorized
29 by the Municipal Utility District Act (Division 6 (commencing
30 with Section 11501) of the Public Utilities Code).

31 (g) Commercial paper of "prime" quality of the highest
32 ranking or of the highest letter and number rating as provided for
33 by a nationally recognized ~~rating service~~ *statistical-rating*
34 *organization (NRSRO)*. The entity that issues the commercial
35 paper shall meet all of the following conditions in either paragraph
36 (1) or paragraph (2):

37 (1) The entity meets the following criteria:

38 (A) Is organized and operating in the United States as a general
39 corporation.

1 (B) Has total assets in excess of five hundred million dollars
2 (\$500,000,000).

3 (C) Has debt other than commercial paper, if any, that is rated
4 “A” or higher by a nationally recognized ~~rating-service~~
5 *statistical-rating organization (NRSRO)*.

6 (2) The entity meets the following criteria:

7 (A) Is organized within the United States as a special purpose
8 corporation, trust, or limited liability company.

9 (B) Has programwide credit enhancements including, but not
10 limited to, overcollateralization, letters of credit, or surety bond.

11 (C) Has commercial paper that is rated “A-1” or higher, or the
12 equivalent, by a nationally recognized ~~rating-service~~
13 *statistical-rating organization (NRSRO)*.

14 Eligible commercial paper shall have a maximum maturity of
15 270 days or less. Local agencies, other than counties or a city and
16 county, may invest no more than 25 percent of their money in
17 eligible commercial paper. Local agencies, other than counties or
18 a city and county, may purchase no more than 10 percent of the
19 outstanding commercial paper of any single issuer. Counties or a
20 city and county may invest in commercial paper pursuant to the
21 concentration limits in subdivision (a) of Section 53635.

22 (h) Negotiable certificates of deposit issued by a nationally or
23 state-chartered bank, a savings association or a federal association
24 (as defined by Section 5102 of the Financial Code), a state or
25 federal credit union, or by a state-licensed branch of a foreign
26 bank. Purchases of negotiable certificates of deposit may not
27 exceed 30 percent of the agency’s money which may be invested
28 pursuant to this section. For purposes of this section, negotiable
29 certificates of deposit do not come within Article 2 (commencing
30 with Section 53630), except that the amount so invested shall be
31 subject to the limitations of Section 53638. The legislative body
32 of a local agency and the treasurer or other official of the local
33 agency having legal custody of the money are prohibited from
34 investing local agency funds, or funds in the custody of the local
35 agency, in negotiable certificates of deposit issued by a state or
36 federal credit union if a member of the legislative body of the local
37 agency, or any person with investment decisionmaking authority
38 in the administrative office manager’s office, budget office,
39 auditor-controller’s office, or treasurer’s office of the local agency
40 also serves on the board of directors, or any committee appointed

1 by the board of directors, or the credit committee or the
2 supervisory committee of the state or federal credit union issuing
3 the negotiable certificates of deposit.

4 (i) (1) Investments in repurchase agreements or reverse
5 repurchase agreements or securities lending agreements of any
6 securities authorized by this section, as long as the agreements are
7 subject to this subdivision, including the delivery requirements
8 specified in this section.

9 (2) Investments in repurchase agreements may be made, on any
10 investment authorized in this section, when the term of the
11 agreement does not exceed one year. The market value of
12 securities that underlay a repurchase agreement shall be valued at
13 102 percent or greater of the funds borrowed against those
14 securities and the value shall be adjusted no less than quarterly.
15 Since the market value of the underlying securities is subject to
16 daily market fluctuations, the investments in repurchase
17 agreements shall be in compliance if the value of the underlying
18 securities is brought back up to 102 percent no later than the next
19 business day.

20 (3) Reverse repurchase agreements or securities lending
21 agreements may be utilized only when all of the following
22 conditions are met:

23 (A) The security to be sold on reverse repurchase agreement or
24 securities lending agreement has been owned and fully paid for by
25 the local agency for a minimum of 30 days prior to sale.

26 (B) The total of all reverse repurchase agreements and
27 securities lending agreements on investments owned by the local
28 agency does not exceed 20 percent of the base value of the
29 portfolio.

30 (C) The agreement does not exceed a term of 92 days, unless
31 the agreement includes a written codicil guaranteeing a minimum
32 earning or spread for the entire period between the sale of a
33 security using a reverse repurchase agreement or securities lending
34 agreement and the final maturity date of the same security.

35 (D) Funds obtained or funds within the pool of an equivalent
36 amount to that obtained from selling a security to a counterparty
37 by way of a reverse repurchase agreement or securities lending
38 agreement shall not be used to purchase another security with a
39 maturity longer than 92 days from the initial settlement date of the
40 reverse repurchase agreement or securities lending agreement,

1 unless the reverse repurchase agreement or securities lending
2 agreement includes a written codicil guaranteeing a minimum
3 earning or spread for the entire period between the sale of a
4 security using a reverse repurchase agreement or securities lending
5 agreement and the final maturity date of the same security.

6 (4) (A) Investments in reverse repurchase agreements,
7 securities lending agreements, or similar investments in which the
8 local agency sells securities prior to purchase with a simultaneous
9 agreement to repurchase the security may only be made upon prior
10 approval of the governing body of the local agency and shall only
11 be made with primary dealers of the Federal Reserve Bank of New
12 York or with a nationally or state-chartered bank that has or has had
13 a significant banking relationship with a local agency.

14 (B) For purposes of this chapter, “significant banking
15 relationship” means any of the following activities of a bank:

16 (i) Involvement in the creation, sale, purchase, or retirement of
17 a local agency’s bonds, warrants, notes, or other evidence of
18 indebtedness.

19 (ii) Financing of a local agency’s activities.

20 (iii) Acceptance of a local agency’s securities or funds as
21 deposits.

22 (5) (A) “Repurchase agreement” means a purchase of
23 securities by the local agency pursuant to an agreement by which
24 the counterparty seller will repurchase the securities on or before
25 a specified date and for a specified amount and the counterparty
26 will deliver the underlying securities to the local agency by book
27 entry, physical delivery, or by third-party custodial agreement.
28 The transfer of underlying securities to the counterparty bank’s
29 customer book-entry account may be used for book-entry delivery.

30 (B) “Securities,” for purpose of repurchase under this
31 subdivision, means securities of the same issuer, description, issue
32 date, and maturity.

33 (C) “Reverse repurchase agreement” means a sale of securities
34 by the local agency pursuant to an agreement by which the local
35 agency will repurchase the securities on or before a specified date
36 and includes other comparable agreements.

37 (D) “Securities lending agreement” means an agreement
38 under which a local agency agrees to transfer securities to a
39 borrower who, in turn, agrees to provide collateral to the local
40 agency. During the term of the agreement, both the securities and

1 the collateral are held by a third party. At the conclusion of the
2 agreement, the securities are transferred back to the local agency
3 in return for the collateral.

4 (E) For purposes of this section, the base value of the local
5 agency's pool portfolio shall be that dollar amount obtained by
6 totaling all cash balances placed in the pool by all pool
7 participants, excluding any amounts obtained through selling
8 securities by way of reverse repurchase agreements, securities
9 lending agreements, or other similar borrowing methods.

10 (F) For purposes of this section, the spread is the difference
11 between the cost of funds obtained using the reverse repurchase
12 agreement and the earnings obtained on the reinvestment of the
13 funds.

14 (j) Medium-term notes, defined as all corporate and depository
15 institution debt securities with a maximum remaining maturity of
16 five years or less, issued by corporations organized and operating
17 within the United States or by depository institutions licensed by
18 the United States or any state and operating within the United
19 States. Notes eligible for investment under this subdivision shall
20 be rated "A" or better by a nationally recognized rating service.
21 Purchases of medium-term notes shall not include other
22 instruments authorized by this section and may not exceed 30
23 percent of the agency's money that may be invested pursuant to
24 this section.

25 (k) (1) Shares of beneficial interest issued by diversified
26 management companies that invest in the securities and
27 obligations as authorized by subdivisions (a) to (j), inclusive, or
28 subdivisions (m) or (n) and that comply with the investment
29 restrictions of this article and Article 2 (commencing with Section
30 53630). However, notwithstanding these restrictions, a
31 counterparty to a reverse repurchase agreement or securities
32 lending agreement is not required to be a primary dealer of the
33 Federal Reserve Bank of New York if the company's board of
34 directors finds that the counterparty presents a minimal risk of
35 default, and the value of the securities underlying a repurchase
36 agreement or securities lending agreement may be 100 percent of
37 the sales price if the securities are marked to market daily.

38 (2) Shares of beneficial interest issued by diversified
39 management companies that are money market funds registered

1 with the Securities and Exchange Commission under the
2 Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.).

3 (3) If investment is in shares issued pursuant to paragraph (1),
4 the company shall have met either of the following criteria:

5 (A) Attained the highest ranking or the highest letter and
6 numerical rating provided by not less than two nationally
7 recognized statistical rating organizations.

8 (B) Retained an investment adviser registered or exempt from
9 registration with the Securities and Exchange Commission with
10 not less than five years' experience investing in the securities and
11 obligations authorized by subdivisions (a) to (j), inclusive, or
12 subdivisions (m) or (n) and with assets under management in
13 excess of five hundred million dollars (\$500,000,000).

14 (4) If investment is in shares issued pursuant to paragraph (2),
15 the company shall have met either of the following criteria:

16 (A) Attained the highest ranking or the highest letter and
17 numerical rating provided by not less than two nationally
18 recognized statistical rating organizations.

19 (B) Retained an investment adviser registered or exempt from
20 registration with the Securities and Exchange Commission with
21 not less than five years' experience managing money market
22 mutual funds with assets under management in excess of five
23 hundred million dollars (\$500,000,000).

24 (5) The purchase price of shares of beneficial interest
25 purchased pursuant to this subdivision shall not include any
26 commission that the companies may charge and shall not exceed
27 20 percent of the agency's money that may be invested pursuant
28 to this section. However, no more than 10 percent of the agency's
29 funds may be invested in shares of beneficial interest of any one
30 mutual fund pursuant to paragraph (1).

31 (l) Moneys held by a trustee or fiscal agent and pledged to the
32 payment or security of bonds or other indebtedness, or obligations
33 under a lease, installment sale, or other agreement of a local
34 agency, or certificates of participation in those bonds,
35 indebtedness, or lease installment sale, or other agreements, may
36 be invested in accordance with the statutory provisions governing
37 the issuance of those bonds, indebtedness, or lease installment
38 sale, or other agreement, or to the extent not inconsistent therewith
39 or if there are no specific statutory provisions, in accordance with

the ordinance, resolution, indenture, or agreement of the local agency providing for the issuance.

(m) Notes, bonds, or other obligations that are at all times secured by a valid first priority security interest in securities of the types listed by Section 53651 as eligible securities for the purpose of securing local agency deposits having a market value at least equal to that required by Section 53652 for the purpose of securing local agency deposits. The securities serving as collateral shall be placed by delivery or book entry into the custody of a trust company or the trust department of a bank that is not affiliated with the issuer of the secured obligation, and the security interest shall be perfected in accordance with the requirements of the Uniform Commercial Code or federal regulations applicable to the types of securities in which the security interest is granted.

(n) Any mortgage passthrough security, collateralized mortgage obligation, mortgage-backed or other pay-through bond, equipment lease-backed certificate, consumer receivable passthrough certificate, or consumer receivable-backed bond of a maximum of five years' maturity. Securities eligible for investment under this subdivision shall be issued by an issuer having an "A" or higher rating for the issuer's debt as provided by a nationally recognized rating service and rated in a rating category of "AA" or its equivalent or better by a nationally recognized rating service. Purchase of securities authorized by this subdivision may not exceed 20 percent of the agency's surplus money that may be invested pursuant to this section.

SEC. 2. Section 53635 of the Government Code is amended to read:

53635. (a) This section shall apply to a local agency that is a county, a city and a county, or other local agency that pools money in deposits or investments with other local agencies, including local agencies that have the same governing body. However, Section 53601 shall apply to all local agencies that pool money in deposits or investments exclusively with local agencies that have the same governing body.

This section shall be interpreted in a manner that recognizes the distinct characteristics of investment pools and the distinct administrative burdens on managing and investing funds on a pooled basis pursuant to Article 6 (commencing with Section 27130) of Chapter 5 of Division 2 of Title 3.

1 A local agency that is a county, a city and county, or other local
2 agency that pools money in deposits or investments with other
3 agencies may invest in commercial paper pursuant to subdivision
4 (g) of Section 53601, except that the local agency shall be subject
5 to the following concentration limits:

6 (1) No more than 40 percent of the local agency's money may
7 be invested in eligible commercial paper.

8 (2) No more than 10 percent of the local agency's money that
9 may be invested pursuant to this section may be invested in the
10 outstanding commercial paper of any single issuer.

11 (3) No more than 10 percent of the outstanding commercial
12 paper of any single issuer may be purchased by the local agency.

13 (b) Notwithstanding Section 53601, the City of Los Angeles
14 shall be subject to the concentration limits of this section for
15 counties and for cities and counties with regard to the investment
16 of money in eligible commercial paper.

